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IN THE

Supreme Court of the United States

October Term, 1968.

No. 422.

MARY TOWNSEND COCHRAN,

Petitioner,

v.

GEORGE L. MORRIS and GIRARD TRUST BANK, EXECUTORS UNDER WILL, AND TRUSTEES UNDER DEED, OF MARY H. TOWNSEND, DECEASED; BRYN MAWR HOSPITAL; THE CHILDREN'S HOSPITAL OF PHILADELPHIA; FATHER FLANAGAN'S BOYS' HOME; BISHOP LEONARD'S CHARITIES, INC.; AMERICAN CANCER SOCIETY, PHILADELPHIA DIVISION, INC.; ESTATE OF JOSEPH F. MAGUIRE, DECEASED; RT. REV. MSGR. ALOYSIUS F. X. FARRELL; LILLIAN R. KELLY; EDWARD C. DURKIN, M. D.; ELIZABETH T. STOEBENAU; MOST REV. JOHN J. KROL, ARCHBISHOP OF PHILADELPHIA; ST. VINCENT'S HOSPITAL FOR WOMEN AND CHILDREN; WILLIAM C. SENNETT, ATTORNEY GENERAL OF COMMONWEALTH OF PENNSYLVANIA AS PARENS PATRIAE OF SUNDRY CHARITABLE BENEFICIARIES.

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

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Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

I. QUESTIONS PRESENTED FOR REVIEW.

1. Whether Petitioner's constitutional rights were violated in a Will Contest where a State Trial Court, in the exercise of its discretion in accordance with prevailing law, limited the Petitioner's pre-trial discovery to extensive documentary evidence, interrogatories, and oral depositions of six key witnesses lasting eight days and filling over 1,000 pages of the record.

2. Whether Petitioner's constitutional rights were violated when the Trial Court, in accordance with accepted principles of Pennsylvania law, limited cross-examination of one of the subscribing witnesses by calling a halt to questions concerning his vacation trip to the West Indies after the execution of the Will.

II. STATEMENT OF THE CASE.

(a) The Substantive Facts.

This is a Will Contest which also involves the validity of a revocable inter vivos trust into which the Will poured the residue of the decedent's estate. The facts, as developed at the trial, present a not unusual picture of a childless widow who decided to leave the residue of her estate to charities rather than to her husband's niece who was already handsomely provided for by his Will.

The decedent's husband had died in 1960 leaving half of his estate to his wife and the residue (valued at about $1,500,000—record 21a-22a) in trust for his wife for life, followed by succeeding trusts for his niece (the Petitioner) and her issue. At the time of her husband's death the present decedent had a Will which would also have left the residue of her estate in trust for Petitioner and her issue (record 2149a-2156a). Following her husband's death, however, decedent realized that the Petitioner and her children were "well provided for" by her husband's Will (record 1653a) and she had felt for some time that she should be more generous to charities (record 1888a et seq.). She therefore changed her residuary gift to charitable institutions. The change was carefully considered after extensive discussions with her attorneys and financial adviser (record 1973a-1982a).

The net result is eminently fair. The husband's niece is well taken care of by his estate and the rest of the family wealth will go for the most part to five charitable beneficiaries—The Children's Hospital of Philadelphia, American Cancer Society, Father Flanagan's Boys Home, The Bryn Mawr Hospital and the Pastor of St. Monica's Church, Philadelphia, for the construction of a Home for the aged and infirm of the Parish.

The Petitioner originally attacked the Will and Deed of Trust on practically every known ground for a Will Contest (record 216a et seq.) but various grounds were abandoned from time to time as the case proceeded and it became evident there were no facts to support them. Eventually the Petitioner limited her attack to an allegation of forgery. In view of the fact that the various contested testamentary papers were all duly witnessed by entirely reliable persons present at their execution, the allegation of forgery must be based on the proposition that these witnesses—which included three respected members of the Philadelphia Bar and a vice president of one of our leading trust companies—conspired with decedent's housekeeper to forge the documents in question, and thereafter compounded their felony by committing perjury at the trial—all for purely altruistic motives since none of them benefited by the changes in question. The beneficiaries of the alleged fraud, conspiracy, forgery and perjury are the five diverse totally unrelated charitable institutions named above. At the close of Petitioner's case, the Trial Court found no grounds for the attack on the Will and Trust, directed the Will be admitted to probate and declared the trust valid. The Pennsylvania Supreme Court affirmed without dissent.

(b) Pre-Trial Discovery.

In response to petitions for pre-trial discovery (which in the Orphans' Courts of Pennsylvania is subject to court supervision) Petitioner was supplied with all testamentary writings of the decedent dating back to 1953 (record 58a-103a, 883a, and 2154a-57a), doctors', hospital and pharmacists' records of the decedent, and various other miscellaneous papers (record 2215a-18a and 2280a-2442a). In answer to interrogatories she was supplied with the names of all

persons known to the executors and the decedent's attorneys who may have had information concerning decedent's mental and physical condition (record 993a). Finally, the Petitioner was permitted to take pre-trial oral depositions of six persons—the decedent's personal physician, her chauffeur, her cook, her housekeeper, her financial adviser, and her attorney—witnesses which Petitioner herself had designated in a request for depositions in connection with a factual dispute that developed concerning her motion for the production of documents. These depositions lasted for eight days and covered over 1,000 pages of the record (1128a through 2144a) and were all admitted in evidence without objection and considered by the Trial Court in arriving at its judgment against the Petitioner.

Petitioner's demands for further pre-trial production of documents and oral depositions of 27 additional witnesses were denied.

(c) The Trial.

Contrary to statements and implications in the petition, there was no "withholding" or "suppression" of evidence at the trial, which lasted a full week for the petitioner's case alone. Her counsel was allowed to (and did) call and examine any witnesses he wished and the documents previously demanded for pre-trial discovery were by stipulation present in court as if on subpoena duces tecum (record 433a et seq.) and available for production to the extent that Petitioner might have properly identified them and showed their relevance in accordance with Pennsylvania practice. In the one case where such a document was so identified (the attorney-draftsman's office memorandum concerning one of the contested instruments), it was produced (record 543a-547a).

As the enormous record in this case shows, the hearing judge was most liberal in allowing Petitioner full scope in

her examination and cross-examination of various witnesses during the extensive trial—even to the extent of allowing digressions into matters having little or no relevance to the issues. However, when counsel for the contestant started a detailed examination of one of the decedent's attorneys (one of two subscribing witnesses to one of the many disputed documents) concerning his vacation trip to the West Indies following the execution of one of the documents, the Court limited the cross-examination, in accordance with accepted principles, after Petitioner's counsel had failed to make any satisfactory offer of proof (record 833a et seq.).

III. ARGUMENT.

There is no federally protected right to pursue irrelevant and immaterial lines of inquiry by pretrial discovery or cross-examination of witnesses in a state court proceeding to determine the validity of testamentary writings. Petitioner is merely complaining of the administration by a state court of its own rules which grant certain rights of discovery in specific situations subject to prescribed limitations. Neither trials nor discovery proceedings may be prolonged by irrelevant inquiry and the state courts are required to exercise their discretion to keep both testimony at trials and pretrial discovery within reasonable limits and relevant to the issues to be decided. Petitioner never showed or even sought to show that the areas of inquiry deemed irrelevant by the state courts had any significance whatever. Neither the state rules themselves nor the manner in which they were applied violated any of petitioner's constitutional rights.

For many years Rule 36 of the Pennsylvania Supreme Court Orphans' Court Rules has provided that "the local Orphans' Court by general rule or by special order may prescribe the practice relating to depositions, discovery and the production of documents." The reason for this rule is explained in the opinion of the Orphan's Court in the present case in its Special Order of March 7, 1966 (record 185a) where the court contrasts the issues of the ordinary case of trespass in the Common Pleas with the broad and often ill-defined issues before the court in Will Contests and other Orphans' Court proceedings where unlimited discovery could enable a contestant (whose main weapon is often delay) to hold up the settlement of an estate indefinitely. We would point out that this decedent died October 1, 1965, nearly three years ago, and her estate of approximately $6,000,000.00 remains undistributed to this day on account of this litigation.

The Supreme Court of Pennsylvania had dealt with the scope of Orphans' Court discovery under this rule in *Thompson Will*, 416 Pa. 249, 261, 206 A. 2d 21 (1965) where it stated that liberal discovery should be permitted, although " 'fishing expeditions' were not to be countenanced . . . ." As set forth above in the Statement of the Case, liberal discovery was permitted in this case and the Pennsylvania Supreme Court held that the Orphans' Court was well within its discretion in denying the unreasonable demands for additional pre-trial discovery. Petitioner was at no time denied access to any witnesses or documents at the trial in any instance where her counsel made a proper demand. For the Pennsylvania requirement for identifying and showing the relevance of demanded documents see *Chatinsky v. Dubrow Electronics*, 27 D. & C. 2d 486 (C. P. 4 Phila. 1962); *Day v. B. J. & H. Sales, Inc.*, 39 D. & C. 2d 422 (C. P. Luz. 1966); *Standard Pennsylvania Practice* (1958) Vol. 5, §§ 430, 432, pp. 611, 612.

Similarly, the Petitioner was allowed the broadest latitude in her counsel's examination and cross-examination of witnesses, although some restraint was imposed on cross-examination in accordance with accepted principles as set forth, inter alia, in *Kline v. Kachmar*, 360 Pa. 396, 403 et seq., 61 A. 2d 825 (1948).

The Index to the Record filed in this Court consists of five large pages of small print, the Index to the Exhibits 8 pages more, and the Docket Entries 3 pages more, making a total of 16 pages of separate items in fine print. Even a casual examination of this material discloses the thoroughness with which the Petitioner's various claims were all considered and carefully passed upon throughout the course of this extended litigation. The very careful and thorough opinion of the Trial Judge (printed in the Appendix to the Petition), as well as the entire record, will show that all these rules were liberally applied in favor of the Petitioner

throughout. The Pennsylvania Supreme Court unanimously agreed that the Trial Court exercised its discretion properly.

We are unable to see any constitutional objection to the rules themselves or to the manner in which they were applied. In her petition (page 22) Petitioner wonders whether she sufficiently preserved her right to raise a federal question in this Court. We can see no Federal question she could raise.

IV. CONCLUSION.

The Petition presents no proper question for review by this Court and should therefore be denied.

Respectfully submitted,

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